



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB-2022-0005; Notice No. 211]

RIN 1513-AC29

Proposal Regarding Labeling Wines Containing Added Distilled Spirits

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its wine labeling and advertising regulations to remove an existing regulatory prohibition against statements which indicate that a wine contains distilled spirits. This proposed deregulatory action will allow wine makers and importers to provide additional information to consumers about their wines, while still providing consumers with adequate and non-misleading information as to the identity and quality of the products they purchase.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within [Docket No. TTB-2022-0005](#) as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/notices-of-proposed-rulemaking> under Notice No. 211. Alternatively, you may submit comments via postal mail to the

Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW. Box 12, Washington, DC 20005. Please see the **Public Participation** section of this document for further information on the comments requested regarding this proposal and the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Morgan Johnson, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 217.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Sections 105(e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), authorize the Secretary of the Treasury to prescribe regulations for the labeling and advertising of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels and in advertisements, and ensure that labels and advertisements provide the consumer with adequate information as to the identity and quality of the product.

TTB administers these FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120-01.

Current Regulatory Requirements

Part 4 of the TTB regulations (27 CFR part 4) sets forth standards promulgated under the FAA Act to ensure that wine labeling and advertising

provides adequate information to consumers as to the identity and quality of the product. The TTB regulations at 27 CFR 4.39 set forth rules regarding certain wine labeling practices that could be considered deceptive or misleading, and are therefore prohibited. Among these practices, TTB regulations prohibit labeling wine to indicate that it contains distilled spirits, with one exception discussed in detail below. Specifically, § 4.39(a)(7) states that wine containers and labels may not bear “any statement, design, device, or representation (other than a statement of alcohol content in conformity with 27 CFR 4.36) which tends to create the impression that a wine (i) Contains distilled spirits; (ii) Is comparable to a distilled spirit; or (iii) Has intoxicating qualities.”

Likewise, the TTB regulations at 27 CFR 4.64 address certain wine advertising practices that are prohibited as deceptive or misleading, and provide a similar prohibition that applies to labeling. Specifically, § 4.64(a)(8) provides that wine advertisements may not contain any statement, design, device, or representation which tends to create the impression that a wine contains distilled spirits, is comparable to distilled spirits, or has intoxicating qualities.

These labeling and advertising provisions were promulgated in the 1930s after the repeal of Prohibition, likely as a measure to prevent winemakers from misrepresenting to consumers that their wine contained or was comparable to distilled spirits. In the one exception to this prohibition, if a statement of composition is required to appear as the designation of a product not defined in part 4, the statement of composition may include a reference to the type of distilled spirits that has been added to the wine.

At 27 CFR 4.21, the TTB regulations set forth categories of wine that help identify the composition, character, and origin of the wine. These identifiers are known as class and type designations. For example, “grape wine” is a class of

wine, and “Muscadine” is a type of grape wine. This section also sets forth the standards for those classes and types, referred to in this document as “standards of identity.” The consistent and accurate designation of wine leads to consumer and trade understanding of the quality and identity of the wine. The standards of identity specifically recognize that certain types of distilled spirits may be added to certain classes of wine, that is, to grape wine, fruit wine, agricultural wine, and aperitif wine. See § 4.21(a), (e), (f), and (g), respectively. However, because of the prohibitions in §§ 4.39(a)(7) and 4.64(a)(8) regarding references to distilled spirits, wine bottlers generally have not been able to state on the label or in advertising that those wines contain spirits.

If a wine does not meet any of the defined standards of identity, the wine label must bear, instead of a class and type designation, a statement of composition. See 27 CFR 4.34(a). In such cases, the statement of composition may include a reference to the type of distilled spirits contained in the wine. See §§ 4.39(a)(7) and 4.64(a)(8). In these instances, statements of composition serve as the product’s class and type designation and must adequately reflect the composition and character of the product. For instance, a raspberry-flavored grape wine that contains brandy may be labeled as “Grape wine with natural flavor and apple brandy.”

Petition from Sweet and Fortified Wine Association

The Sweet and Fortified Wine Association, a wine industry trade group, submitted a petition to TTB requesting that the regulations be revised to allow dessert grape wines to be labeled with the words “fortified” and/or “grape (wine) spirits added.” These industry members produce wines that are typically standard grape wines in the style of port, sherry, madeira, or other types of dessert wine which contain added brandy or other distilled spirits. However, as

discussed above, § 4.39(a)(7) prohibits statements on standard wines (i.e. wines which meet a class and type designation) which indicate that the wine contains distilled spirits.

According to the petition, allowing label statements that disclose the presence of added spirits in a wine will provide greater information to consumers, while prohibiting producers from fully disclosing the presence of added spirits could be misleading and is not consistent with TTB's consumer protection mission. Additionally, the petitioner asserts that producers of fortified wines are finding it difficult to accurately communicate on the label that a wine has been fortified with spirits since most semi-generic names for fortified wines, such as "port" or "sherry," are now prohibited by law from appearing on domestic wine labels (unless approved by TTB prior to March 10, 2006). See 26 U.S.C. 5388(c).¹ The petitioner believes that this puts producers of new fortified wines at a competitive disadvantage in the market place.

The petitioner contends that § 4.39(a)(7) is an antiquated and archaic regulation that is irrelevant to American wine consumers in the 21st century. The petitioner argues that concerns from the post-Prohibition era that terms such as "fortified" imply significant alcohol content or could increase the incidence of

¹ A semi-generic name is a name of geographic significance which may also serve as a class and type designation. Examples of semi-generic names include: Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, and Tokay. On March 10, 2006, the Agreement between the United States (U.S.) and the European Union (EU) on Trade in Wine ("the Wine Agreement") was signed. As part of the Wine Agreement, the U.S. agreed to seek to change the legal status of those names to restrict their use solely to wines originating in the applicable EU Member State, with certain exceptions for "grandfathered" names. Shortly thereafter, section 422 of the Tax Relief and Health Care Act of 2006 (Pub. L 109-432) amended section 5388 of the Internal Revenue Code (26 U.S.C. 5388) to implement Article 6 of the Wine Agreement. The effect of this change in law is to restrict use of the semi-generic terms referenced in the Wine Agreement to wines originating in the geographic region indicated by the name. Under Article 6.2 of the Wine Agreement and 26 U.S.C. 5388, there is a "grandfather" provision that allows a person or his or her successor in interest using one of the names in the United States before March 10, 2006, to continue using the name, provided that the name is only used on labels for wine bearing the brand name, or the brand name and fanciful name, if any, for which the applicable Certificate of Label Approval (COLA) was issued prior to the date of signature of the Wine Agreement.

intoxication have little bearing on reality. Instead, according to the petitioner, most fortified wines have an alcohol content of 18 to 19 percent, which the petitioner asserts is only slightly higher than what many unfortified wines achieve as a result of natural fermentation and winemaking practices.

According to the petition, it is the petitioner's understanding that TTB previously suggested that using the term "fortified" on a label could be problematic because the term "fortified" has a meaning for consumers under the U.S. Food and Drug Administration (FDA) regulations regarding the labeling of products with added vitamins, minerals, or protein. The petitioner asserts that consumers will not be confused by the word "fortified" because the word has a different meaning when applied to wine than it does when applied to food. The petitioner supports its claim by stating that these alternate meanings can be found in dictionary definitions of "fortified." As one such example, the petitioner notes that Merriam–Webster defines "fortified wine" as a wine to which alcohol, usually in the form of grape brandy, has been added during or after fermentation. Additionally, the petitioner notes that TTB regulations use the word "fortification" to mean containing added spirits, citing the definition of "added brandy" in 27 CFR 4.10.

Finally, the petitioner contends that TTB's wine labeling regulations are confusing and inconsistent regarding the addition of spirits, since the standard of identity for grape wine at § 4.21(a)(6) permits the addition of alcohol to a dessert grape wine, while § 4.39(a)(7) prohibits the producer from referencing the presence of added alcohol on the wine's label, except where it appears in a required statement of composition.

Historical Usage of Terms Such as "Fortified Wine"

The earliest wine labeling regulations issued by the Department of the

Treasury under the authority of the FAA Act included a standard of identity for “fortified wine” as a class of wine. In the 1938 edition of the Code of Federal Regulations, the wine labeling regulations in 27 CFR part 4 listed “fortified wine” as class six in § 4.21, the regulation which contains the standards of identity for wine. Paragraph (f) of § 4.21 defined “fortified wine,” in part, as a “product made with the addition of such brandy or alcohol as is permitted under internal-revenue laws.”

However, on August 26, 1938, the Department of the Treasury issued Regulations No. 4, Amendment No. 2, which, among other revisions, removed the fortified wine class from part 4 (3 FR 2093). That same rulemaking also added in § 4.39(a)(7) and § 4.64(a)(8), which contain prohibitions on statements related to added alcohol that are very similar to today’s § 4.39(a)(7) and § 4.64(a)(8). Statements were prohibited if they created “the impression that the wine has been ‘fortified’ or contains distilled spirits, or has intoxicating qualities,” except that a statement of composition, if required to appear as the designation of a product not defined in the regulations, could include a reference to the type of distilled spirits added to the wine.

These regulatory changes were not accompanied by an explanation. However, TTB has reviewed comments from wine industry members made during the rulemaking process regarding the word “fortified.” For example, prior to the issuance of the finalized regulations, a trade association representative expressed concerns in a July 28, 1938 memo that the word “fortified” had an “inference that the product contains a special alcoholic ‘kick,’” and was therefore a selling point for certain consumers.

More recently, the word “fortified” has assumed another regulatory meaning when applied to foods and beverages. TTB has in the past advised that

it viewed the idea of using “fortified” to describe certain grape wines as problematic, given that FDA regulations at 21 CFR 104.20(h)(3) define the word “fortified” to describe foods with added vitamins, minerals, or protein. Given the current use of the word “fortified” as established under FDA regulations, TTB previously took the position that authorizing the use of the term “fortified” in a way inconsistent with the FDA regulations could create consumer confusion.

TTB Analysis

After further consideration, TTB agrees with the petitioner that allowing a wine producer to disclose the presence of added spirits in a wine has the potential to provide more information to consumers, and provides producers with greater flexibility to better communicate the nature of their products to consumers. TTB also agrees that the wine industry has changed significantly since the 1930s. However, TTB is still charged by the FAA Act with ensuring that wine is labeled in such a way that consumers are not misled about the identity or quality of the product. For example, consumers should be able to readily determine that a product is wine and not a distilled spirit, and that a wine contains added distilled spirits, not vitamins.

With these concerns in mind, TTB is proposing for public comment an amendment to its regulations to allow for a specific type of reference to a wine with added distilled spirits. We believe that such references will not be misunderstood by or be misleading to consumers, and will allow for truthful information related to the identity of the product to be conveyed. Specifically, TTB is proposing to amend § 4.39(a)(7) and § 4.64(a)(8) to provide that even for wines that meet a standard of identity, if a wine contains added distilled spirits, a statement of composition may be used which indicates that distilled spirits have been added.

As discussed earlier, a statement of composition serves as the product's class and type designation when a product does not meet one of the standards of identity in § 4.21, that is, it is a wine specialty product. The statement of composition must adequately reflect the composition and character of the product. Under the current regulation, the statement of composition for a wine specialty product may reference any distilled spirits that have been added to the product. Under the proposed regulation, wines that do meet a standard of identity could also be labeled with truthful references to added distilled spirits. Thus, for example, a product that meets the standard of identity for grape dessert wine in § 4.21(a) may be labeled with a statement of composition such as "Grape wine with added brandy." The proposed regulations would apply to any wine that contains added distilled spirits, and not just to dessert grape wines as proposed by the petitioner.

Additionally, the proposed regulations would allow the use of the word "fortified" as part of such a statement of composition—for example, "Grape wine fortified with brandy." TTB is therefore including an example of this use of "fortified" in the proposed regulatory text. TTB believes that when the word "fortified" is used in this context there will be no misunderstanding that the statement indicates that the wine contains added vitamins, minerals, or protein. We welcome comments specifically regarding this proposal.

Further, TTB is proposing to revise §§ 4.39(a)(7)(i) and 4.64(a)(8)(i), which prohibit any statement, design, device, or representation which tends to create the impression that a wine contains distilled spirits. Under the proposal, the revision would specifically prohibit only those statements that would be false or misleading, such as, for example, a representation that created the impression that the wine contained distilled spirits when it did not. TTB also is proposing

additional language that would state that when a wine does contain added distilled spirits, the wine may be labeled with a statement of composition referencing the type of distilled spirit that has been added. In general, under this proposal, a distilled spirits reference would be permissible on a wine label or in an advertisement for a wine, provided that the reference is neither false nor misleading. Similarly, under this proposal, a distilled spirits reference that appeared as part of a truthful and accurate statement of composition would not be considered misleading, as it would provide a context that more clearly communicates to the consumer that the added distilled spirit is merely an ingredient in the wine, and that the product is not a distilled spirits product. However, we invite comments on this issue.

Public Participation

Comments Sought

TTB requests comments from interested members of the public. TTB is particularly interested in comments regarding whether the proposed amendments will result in statements on wine labels that could be misleading to consumers about the product. We are also interested in comments about whether a statement of composition which indicates that a wine is “fortified” with spirits could create the impression that the wine contains added vitamins, minerals, or protein. Please provide specific information in support of your comments.

Prior to the publication of this rulemaking, TTB published Notice No. 176 in the **Federal Register** on November 26, 2018 (83 FR 60562), which proposed to reorganize and recodify 27 CFR part 4 in order to simplify and clarify regulatory standards, and to incorporate guidance documents and current policy into the regulations. In Notice No. 176, TTB proposed to continue its current policy of allowing a reference to added distilled spirits only on the labels of wine

that require a statement of composition while prohibiting such references on wines that do not require a statement of composition. Notice No. 176 also did not specifically propose to allow the use of the term “fortified” as a part a statement of composition as this notice of proposed rulemaking does.

TTB is taking this separate rulemaking action to address only the specific circumstances described in this document. As the comment period for Notice No. 176 has closed, TTB will consider any relevant comments it received in response to Notice No. 176 along with any comments made in response to this specific rulemaking in determining what action to take on this proposal.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 211 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related

Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. TTB is proposing to amend its wine labeling and advertising regulations to remove an existing regulatory prohibition against statements which indicate that a wine contains distilled spirits. This proposed deregulatory action will allow wine makers and importers to provide additional information to consumers about their wines, while still providing consumers with adequate and non-misleading information as to the identity and quality of the products they purchase. The proposed amendments merely provide optional, additional flexibility in wine labeling and advertising decisions. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, part 4 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.39 is amended by:

- a. Revising paragraphs (a)(7) introductory text and (a)(7)(i); and

- b. , Removing the undesignated paragraph located after paragraph (a)(7)(iii).

The revisions reads as follows:

§ 4.39 Prohibited practices.

(a) * * *

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with § 4.36), which tends to create a misleading or inaccurate impression that a wine:

- (i) Contains distilled spirits. (A wine that contains added distilled spirits may be labeled with an accurate statement of composition which references the

type of distilled spirits that have been added, for example, “grape wine fortified with apple brandy,” or “apple wine with apple neutral spirits,” and not be considered misleading.);

(ii) * * *

(iii) * * *

* * * * *

3. Section 4.64 is amended by revising paragraph (a)(8), including the undesignated concluding paragraph, to read as follows:

§ 4.64 Prohibited practices.

(a) * * *

(8) Any statement, design, device, or representation which relates to alcohol content or which tends to create a misleading or inaccurate impression that a wine:

(i) Contains distilled spirits. (A wine that contains added distilled spirits may be labeled with an accurate statement of composition which references the type of distilled spirits that have been added, for example, “grape wine fortified with apple brandy,” or “apple wine with apple neutral spirits,” and not be considered misleading.);

* * * * *

3. Section 4.64 is amended by revising paragraph (a)(8) to read as follows:

§ 4.64 Prohibited practices.

(a) * * *

(8)(i) Any statement, design, device, or representation which relates to alcohol content or which tends to create a misleading or inaccurate impression that a wine:

(A) Contains distilled spirits. (A wine that contains added distilled spirits may be designated with an accurate statement of composition which references the type of distilled spirits that have been added, for example, “grape wine fortified with apple brandy,” or “apple wine with apple neutral spirits,” and not be considered misleading.); (B) Is comparable to a distilled spirit;

(C)) Has intoxicating qualities.

(ii) An approved wine label, which bears the statement of alcohol content, may be depicted in any advertising media, or an actual wine bottle showing the approved label bearing the statement of alcohol content may be displayed in any advertising media.

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Signed: May 27, 2022.

Mary G. Ryan,

Administrator.

Approved: May 27, 2022.

Timothy E. Skud,

*Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).*

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